

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	C. A. No. 05-69 (GMS)
)	
THE SUGAR ASSOCIATION, et. al.)	
)	
Defendants.)	

**DECLARATION OF SARAH E. DILUZIO
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

I, Sarah E. DiLuzio, declare as follows:

1. I am an attorney duly licensed to practice before this Court and an associate at the law firm of Potter Anderson & Corroon LLP, counsel to defendants in this action. I submit this declaration in support of Defendants' Motion to Dismiss. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would competently testify thereto.

2. Attached hereto are true and correct copies of the following documents:

Exhibit A – Complaint for Damages and Injunctive Relief in the lawsuit captioned, *The Sugar Association, Inc. v. McNeil-PPC, Inc.*, Civil Action No. 04-CV-10077 DSF (RZX), filed by The Sugar Association, Inc. in the United States District Court for the Central District of California on December 10, 2004.

Exhibit B – Answer to Plaintiff's Complaint in the lawsuit captioned, *The Sugar Association, Inc. v. McNeil-PPC, Inc.*, Civil Action No. 04-CV-10077 DSF (RZX), filed by McNeil-PPC, Inc. and McNeil Nutritionals, LLC in the United States District Court for the Central District of California on February 2, 2005.

Exhibit C -- Declaration of Andrew C. Briscoe III on behalf of Defendant Sugar Cane Association, Inc.

- Exhibit D -- Declaration of Lisa M. Maloy on behalf of
Defendant American Crystal Sugar Company
- Exhibit E -- Declaration of James H. Simon on behalf of
Defendant American Sugar Cane League
- Exhibit F -- Declaration of Oscar R. Hernandez on behalf of
Defendant Atlantic Sugar Association, Inc.
- Exhibit G -- Declaration of E. Alan Kennett on behalf of
Defendant Hawaiian Sugar & Transportation Cooperative
- Exhibit H -- Declaration of William Schwer on behalf of
Defendant Imperial Sugar Company
- Exhibit I -- Declaration of Mark S. Flegenheimer on behalf of
Defendant Michigan Sugar Company
- Exhibit J -- Declaration of David H. Roche on behalf of
Defendant Minn-Dak Farmers Cooperative
- Exhibit K -- Declaration of William F. Tarr on behalf of
Defendant Osceola Farms Company
- Exhibit L -- Declaration of Steve Bearden on behalf of
Defendant Rio Grande Valley Sugar Growers, Inc.
- Exhibit M -- Declaration of John A. Richmond on behalf of
Defendant Southern Minnesota Beet Sugar Cooperative
- Exhibit N -- Declaration of Jeffrey J. Ward on behalf of
Defendant Sugar Cane Growers Cooperative of Florida
- Exhibit O -- Declaration of Inder K. Mathur on behalf of
Defendant Western Sugar Cooperative
- Exhibit P -- Declaration of Richard McKamey on behalf of
Defendant Wyoming Sugar Company, LLC
- Exhibit Q -- Declaration of Luther Markwart on behalf of
Defendant American Sugarbeet Growers Association
- Exhibit R -- Declaration of Michael J. Petruzzello on behalf of
Defendant Qorvis Communications, LLC

I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 25th day of March, 2005, at Wilmington, Delaware.

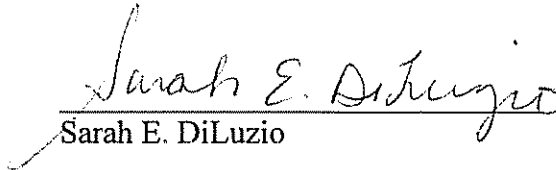

Sarah E. DiLuzio

EXHIBIT A

FILED

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LOS ANGELES

Attorneys for Plaintiff
THE SUGAR ASSOCIATION, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE SUGAR ASSOCIATION,
INC., a Delaware corporation,

Plaintiff,

vs.

McNEIL-PPC, INC., a New
Jersey corporation, McNEIL
NUTRITIONALS, LLC, a
Delaware Limited Liability
Company, and DOES 1 through
10,

Defendants.

Case No.

CV 04 10077 DSF (RZF)

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF ARISING OUT
OF:**

1. False Advertising – 15 U.S.C. § 1125(a);
and
2. Unfair Competition – Cal. Bus. & Prof.
Code §§ 17200 and 17500 *et seq.* and
California Common Law

DEMAND FOR JURY TRIAL

Plaintiff, The Sugar Association, Inc. (the "Sugar Association") hereby
complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Court enjoys jurisdiction over the subject matter presented by this
Complaint because it includes a claim of false advertising that arises under the
Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, which explicitly provides for the
jurisdiction of the federal courts pursuant to 15 U.S.C. § 1121, an authority that is
also endowed pursuant to 28 U.S.C. §§ 1331 and 1338. The Court's jurisdiction
extends beyond the Lanham Act claim to the additional state law claims asserted in

1 this Complaint because they arise from the same nucleus of operative facts as the
2 federal claim, and 28 U.S.C. § 1367 authorizes the exercise of supplemental
3 jurisdiction over all other claims that are so related.

4 2. Venue in this district is proper pursuant to 28 U.S.C. § 1391(a)
5 because a substantial part of the events or omissions giving rise to the Sugar
6 Association's claims occurred in this district and because defendants are subject to
7 personal jurisdiction in this district.

8 II.

9 PARTIES

10 3. The Sugar Association is a corporation that is organized under the laws
11 of the State of Delaware, having a principal place of business at 1101 15th Street,
12 NW, Suite 600, Washington, DC 20005. The Sugar Association was founded by
13 members of the United States sugar industry in 1943, when it was then called the
14 Sugar Research Foundation. It assumed its current name in 1947. The mission of
15 the Sugar Association is to promote the consumption of sugar as part of a healthy
16 diet and lifestyle through the use of sound science and research. The Sugar
17 Association's seventeen (17) member companies are producers and growers of
18 sugar in the United States. Its Board of Directors is comprised of decision-making
19 representatives from each of those companies or organizations. The Sugar
20 Association's members include The Amalgamated Sugar Company, 3184 Elder
21 Street, Boise, ID 83705, Minn-Dak Farmers Cooperative, 7525 Red River Road,
22 Wahpeton, ND 58075, American Crystal Sugar Company, 101 North Third Street,
23 Moorhead, MN 56560, Okeelanta Corporation, 1 North Clematis Street, Suite 200,
24 West Palm Beach, FL 33402, American Sugar Cane League, 206 East Bayou Road,
25 Thibodaux, LA 70302, Osceola Farms Company, PO Box 1059, Palm Beach, FL
26 33480, American Sugar Refining, Inc., 1 Federal Street, Yonkers, NY 10702, Rio
27 Grande Valley Sugar Growers, Inc., 2 1/2 Miles West Highway 107, Santa Rosa,
28 TX 78593, Atlantic Sugar Association, 1 North Clematis Street, Suite 200, West

1 Palm Beach, FL 33402, Southern Minnesota Beet Sugar Cooperative, 83550
 2 County Road 21 - Box 500, Renville, MN 56284, Hawaiian Sugar & Transportation
 3 Cooperative, c/o Gay & Robinson, Inc., 1 Kaumakani Avenue, Kaumakani, Kauai
 4 HI 96747, Sugar Cane Growers Cooperative of Florida, 1500 Sugarhouse Road,
 5 Belle Glade, FL 33430, Imperial Sugar Company, 8016 Hwy 90A, Sugar Land, TX
 6 77482, United States Sugar Corporation, 111 Ponce de Leon Avenue, Clewiston,
 7 FL 33440, Michigan Sugar Company, 4800 Fashion Square Boulevard, Suite 300,
 8 Saginaw, MI 48604, Western Sugar Cooperative, 7555 East Hampden Avenue,
 9 Suite 600, Denver, CO 80231, and Wyoming Sugar, 500 Hillcrest Drive, Worland,
 10 WY 82401 (collectively the "Members").

11 4. Defendant McNeil-PPC, Inc., is a corporation that is organized under
 12 the laws of the State of New Jersey, having a principal place of business at 199
 13 Grandview Road, Skillman, NJ 08558.

14 5. Defendant McNeil Nutritionals, LLC, is a limited liability company
 15 organized under the laws of the State of Delaware, having its principal place of
 16 business at 7050 Camp Hill Road, Fort Washington, PA 19034.

17 6. Defendants McNeil-PPC, Inc., acting through its operating divisions
 18 McNeil Nutritionals and McNeil Specialty Products Company, as well as McNeil
 19 Nutritionals, LLC (collectively "McNeil"), among other things, have been engaged
 20 in the business of manufacturing, distributing and selling an artificial food additive
 21 used as a sweetener and marketed under the brand name Splenda® in a variety of
 22 products that employ the identical brand name (collectively "Splenda").

23 7. The Sugar Association does not know the true names and capacities of
 24 the defendants sued as DOES 1 through 10, inclusive, and, therefore, sues these
 25 defendants by such fictitious names. The Sugar Association will amend this
 26 Complaint to allege the true names and capacities of DOES 1 through 10, inclusive,
 27 when ascertained. For purposes of this Complaint, wherever McNeil is mentioned
 28 it is intended that DOES 1 through 10 be mentioned as well.

1 II.

2 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

3 A. Introduction

4 8. This case concerns the false, deceptive and/or misleading
5 representations made by McNeil about Splenda in order to attract customers to
6 purchase and consume that product, and to divert those customers away from their
7 purchase and consumption of sugar.

8 9. This is a recent development for the producer of Splenda. McNeil had
9 initially positioned its product as a competitor only in the market for artificial,
10 purportedly no-calorie, sweeteners ("Artificial Sweetener Market"). In the
11 Artificial Sweetener Market, the products against which Splenda principally
12 competes are Sweet'N Low® ("Sweet'N Low"), a brand that employs the
13 sweetening ingredient saccharin, and Equal® ("Equal"), a brand that employs the
14 sweetening ingredient aspartame. Only recently, after gaining a significant
15 foothold in the Artificial Sweetener Market—on information and belief, more than
16 Sweet'N Low and Equal combined—has McNeil positioned Splenda to compete in
17 the market for wholesome, natural sweeteners, like sugar, molasses and honey
18 ("Natural Sweetener Market").

19 10. McNeil has entered Splenda into the Natural Sweetener Market by
20 overtly changing the character of its representations to consumers so that it is no
21 longer perceived as a mere "packet" sweetener, and is now regarded as a "pantry
22 staple food." To achieve this objective, McNeil has, among other things, acted just
23 in the last year to introduce a new Splenda-branded product that its president, Colin
24 Watts ("McNeil's President"), publicly proclaimed this September, is "really
25 changing the way people think about sugar" and that "offer[s] a true sugar baking
26 replacement." Splenda's website even openly touts that as of August 2004, it "is
27 growing at the expense of sugar" with sales now "ahead of both Domino and C&H
28 Sugar." This comparison is significant, as one of the Sugar Association's

1 Members, American Sugar Refining, Inc., owns the Domino® sugar brand, and
2 another Member, Hawaiian Sugar & Transportation Cooperative, which is
3 comprised by all the major sugarcane growers in Hawaii, recently ended a ten-year
4 supply contract that required C&H Sugar Company, Inc. to purchase substantially
5 all the raw sugar produced in Hawaii.

6 11. The problem with Splenda's entry into the Natural Sweetener Market
7 and its growth at the expense of sugar and the Members of the Sugar Association in
8 particular is that Splenda is *not* a natural sweetener. Splenda instead attributes its
9 sweet taste to a manufactured, synthetic compound that was not even known to the
10 world scientific community until 1976. This fact has not stopped McNeil from
11 engaging in an advertising campaign that includes both literally false claims as well
12 as misleading statements that falsely imply that Splenda (a) contains real sugar, (b)
13 is some sort of natural, no-calorie, form of sugar, (c) is healthy to consume simply
14 because it carries with it no calories, as the sucralose purportedly passes through the
15 body without being broken down and (d) genuinely tastes like sugar. Because
16 McNeil's literally false, deceptive and/or misleading statements in these regards are
17 being aimed directly at natural sugar producers who compete in the Natural
18 Sweetener Market—in contradistinction to those companies that compete in the
19 Artificial Sweetener Market—the Sugar Association has filed this action for
20 judicial relief.

21 **B. Splenda Unfairly Competes In The Artificial Sweetener Market**

22 12. Since at least September 2000, when McNeil first offered Splenda for
23 sale in retail stores in the United States, Splenda has attempted to gain a
24 competitive advantage in the Artificial Sweetener Market by explicitly and
25 implicitly distinguishing itself from its competitors by representing to the public
26 that Splenda is a *natural* food product. Among other things, it has described its
27 product with the following tag line: "Made from sugar, so it tastes like sugar." In
28 addition, McNeil has employed a variety of techniques to persuade consumers in

1 the Artificial Sweetener Market that it is inherently different from the other
2 artificial sweeteners by, among other things, running television advertisements
3 falsely implying that Splenda is wholesome and pure. For example, one Splenda
4 advertisement answers the question "What are little girls made of?" with the
5 misleading associational phrase, "Splenda and spice and everything nice." More
6 directly, through its spokesperson, Monica Neufang ("McNeil's Spokesperson"),
7 McNeil has publicly characterized its representation that Splenda is made from
8 sugar so it tastes like sugar as "a declarative fact."

9 13. The truth is that Splenda is actually manufactured by synthesizing a
10 small amount of a man-made compound called 4,1',6'-trichloro-4,1',6'-
11 trideoxygalactosucrose, misleadingly named sucralose. Sucralose is chemically
12 achieved through a multi-step patented process that dramatically alters the
13 molecular structure of sucrose by substituting its naturally occurring hydroxyl
14 groups with chlorine, and then combining this artificial substance with large
15 amounts of dextrose, maltodextrin or both, to bulk up the amalgamation and dilute
16 the unnatural, high-intensity sweetness exhibited by sucralose. Additionally, the
17 molecular structure of sucralose so differs from sucrose that the two compounds
18 interact differently with the taste buds on the human tongue. Studies indicate that
19 the potency of sucralose—although high at low levels of concentration—diminishes
20 as its concentration increases such that it can never even achieve the sweetness
21 potency of sugar beyond certain concentration levels. The temporal profile of
22 sucralose also differs from sugar such that the taste effect of sucralose has a longer
23 onset and slower rate of sweetness decay than sugar. Even the "mouth feel" of
24 sucralose differs from sugar due to the dissimilar viscosity of each in the
25 concentrations actually used in their food applications. These factors, among
26 others, render literally false, deceptive and/or misleading the assertion that
27 Splenda's purported relationship to sugar makes it taste like sugar.

28

1 14. McNeil has also employed its marketing campaign to explicitly and
2 implicitly represent to the public that Splenda is a *healthy* food product, which
3 among other things, “the body does not recognize . . . as a carbohydrate,” and its
4 key sweetening ingredient sucralose “passes through the body without being broken
5 down,” so it has “no calories.”

6 15. The truth, according to the “Final Rule” report of the United States
7 Food and Drug Administration (“FDA”) that served as the basis for the FDA’s
8 1999 authorization of Splenda’s use as a general purpose sweetener, and which
9 collects data reported to the FDA by McNeil itself, is that between 11 and 27
10 percent of sucralose is actually absorbed in humans following ingestion, and
11 between 20 and 30 percent of that absorbed sucralose is then metabolized. The
12 FDA reported that what remains unabsorbed and unmetabolized is excreted in the
13 feces and urine. Moreover, the bulking and dilutive ingredients of dextrose and
14 maltodextrin are both carbohydrates that are also metabolized. The consequences
15 of the metabolized sucralose have not been adequately tested, rendering its notions
16 of healthfulness uncertain and dubious, at best.

17 16. As the direct and proximate result of McNeil’s false, deceptive and/or
18 misleading misrepresentations, McNeil has publicly proclaimed that within one
19 year of its introduction of Splenda into the Artificial Sweetener Market, it captured
20 nearly 14 percent of that market share. McNeil has also asserted that by January
21 2004, Splenda’s share of the Artificial Sweetener Market had risen to more than 45
22 percent—more than Sweet’N Low and Equal combined.

23 **C. McNeil Leverages Splenda’s Growth In The Artificial Sweetener**
24 **Market To Compete Unfairly In The Natural Sweetener Market**
25 **Against The Members Of The Sugar Association**

26 17. On information and belief, based upon its dramatic success at
27 employing literally false, misleading and/or deceptive statements about the inherent
28 qualities and effects of Splenda to compete and succeed in the Artificial Sweetener
Market, McNeil hatched a plan to enter into the Natural Sweetener Market and

1 compete against sugar directly. Thus, in or about September 2003, Splenda
2 introduced its "Granular Baker's Bag"—a 9.7 ounce re-sealable plastic pouch that
3 purported to be equivalent in sweetness to the standard five-pound bag of sugar,
4 which Johnson & Johnson, McNeil's ultimate parent company, called
5 "conventional sugar" in its press release of the new product—deceptively implying
6 that Splenda, while not "conventional" sugar, was sugar nonetheless.

7 18. Additionally, in June 2004, McNeil announced its plans to introduce a
8 new product that McNeil's President touted as "offer[ing] a true sugar baking
9 replacement" called the Splenda "Sugar Blend for Baking." This new product
10 became available at retail stores in August 2004, and prompted McNeil to issue a
11 press release this September touting the evolution of its Splenda-branded products
12 from the days when Splenda was available in "packets" to United States consumers
13 only over the Internet in 1999 (when Splenda was vying for a place in the Artificial
14 Sweetener Market), to its 2004 release of the "Sugar Blend for Baking" and
15 ostensible position among "pantry staple food brands" (when Splenda had made
16 clear that it would audaciously promote its artificial product to compete for a place
17 in the Natural Sweetener Market).

18 19. As a result of McNeil's literally false, misleading and/or deceptive
19 representations about Splenda, it has obtained windfall profits that it would not
20 otherwise have obtained. McNeil's misrepresentations have caused and continue to
21 cause a diversion of business and customers from the members of the Sugar
22 Association, each of which is a direct competitor of McNeil in the sweetener
23 industry. Evidence of the diversion of business exists on McNeil's own website for
24 Splenda, where it proclaims that between August 2003 and August 2004 Splenda's
25 sales were "ahead of both Domino and C&H Sugar," that Splenda "[wa]s growing
26 at the expense of sugar," and that "[f]ifty-one percent of the brand's volume growth
27 [wa]s from the sugar category which declined 4 percent."

28

1 **D. Background Facts**

2 20. The Sugar Association was founded in 1943 by members of the United
3 States sugar industry, including both beet and cane growers and sugar producers
4 throughout the United States. The mission of the Sugar Association is to promote
5 the consumption of sugar as part of a healthy diet and lifestyle through the use of
6 sound science and research. The Sugar Association's Members produce and grow a
7 product that is all natural and refined through a purification process that separates
8 99.95 percent pure sucrose from the plant matter of sugarcanes and/or sugar beets.

9 21. Historically, sugar was the predominantly consumed sweetener in the
10 United States and throughout the world, although honey and molasses were also
11 used with some degree of frequency. Over the past two decades, many new
12 sweeteners have been developed including corn syrup, fructose, glucose, high
13 fructose corn syrup, and maltose, as well as artificial sweeteners such as saccharin,
14 aspartame, and sucralose—the sweetening ingredient of Splenda.

15 22. Some of these new sweeteners replaced sugar as the sweetener used in
16 foods and beverages, especially processed and convenience foods. For example,
17 since the early 1980s most soft drinks have been manufactured with high fructose
18 corn syrup rather than sugar. High fructose corn syrup is also used in fruit juices,
19 drinks and ades. Concurrent with the introduction and increased availability and
20 production of the sweeteners other than sugar, during the past twenty years, obesity
21 has risen dramatically throughout the United States.

22 23. Since approximately September 2003, when McNeil released its
23 Granular Baker's Bag to compete against the standard five-pound bag of sugar,
24 McNeil's product Splenda has been a principal competitor with the growers and
25 producers of natural sugar represented by the Sugar Association for consumers in
26 the Natural Sweetener Market. Indeed, McNeil's Spokesperson publicly declared
27 this year that Splenda is the chief competitor of sugar, proclaiming, "Splenda is the
28 No. 1 branded sweetener in the U.S. based on dollar sales, which means that the

1 sales are ahead of both Domino and C&H Sugar.” Moreover, McNeil has touted on
2 its website for Splenda its assertion that this artificial product is “growing at the
3 expense of sugar” and that “[f]ifty-one percent of the brand’s volume growth is
4 from the sugar category which declined 4 percent in the most recent year.”

5 24. The Members of the Sugar Association now compete daily with
6 McNeil to attract new and retain existing customers, including both entities within
7 the food and beverage industry that employ naturally occurring sugars and added
8 sugars or other natural sweeteners in their products, and the end-users who consume
9 those products or who purchase sugar or one of its natural substitutes for use in
10 their own recipes. This competition extends beyond food quality and taste to such
11 attributes as healthfulness and wholesomeness.

12 25. The Members of the Sugar Association devote substantial resources to
13 advertising and promoting their respective brands. Such advertising appears in
14 virtually every form of media, including television, radio and print. Additionally,
15 the Sugar Association indirectly expends substantial resources of the Members to
16 educate both consumer and professional audiences about the consumption of pure,
17 natural sugar, the health threat of obesity and the health benefits of physical
18 activity.

19 **E. The Scope Of McNeil’s Deceptive Advertising**

20 26. Although McNeil has since at least September 2000 offered consumers
21 in the Artificial Sweetener Market in the United States with Splenda, an artificial
22 sweetener that alone among artificial sweeteners, as described above, falsely
23 advertises itself in a manner designed to imply that it is natural, healthy and shares
24 sugar’s sweet taste, since approximately September 2003, McNeil has also touted
25 Splenda as a true alternative to sugar—a “pantry staple food” that is healthy, tastes
26 like sugar and is made from “conventional” sugar.

27 27. Upon information and belief, McNeil has made these literally false,
28 misleading and/or deceptive statements with the aim of diverting customers away

1 from real sugar and to encourage the purchase and use of Splenda instead, thereby
2 generating for McNeil greater sales, customer loyalty and market share.

3 28. The promotion of Splenda as a natural product that is “[m]ade from
4 sugar, so it tastes like sugar” and a healthy product that has “no calories,” among
5 other things, has been an important and material part of McNeil’s advertising
6 strategy. Because customers desire the opportunity to eat natural, healthy foods
7 without increasing their daily caloric intake, McNeil’s promotions of Splenda have
8 produced a substantial amount of revenue to McNeil over and above the normal
9 expected revenue stream.

10 29. Exemplary of the effect of McNeil’s tactics are their influence on the
11 rapidly growing California retail chain Jamba Juice, which now uses Splenda in
12 certain of its drinks. Jamba Juice has a stated “commitment to providing nutritious,
13 vibrant foods,” and an “environmentally conscious” orientation. Although Jamba
14 Juice now uses Splenda in some of its drinks, it still proclaims that its “blends are
15 100% natural” and that it does “not add any processed sugar or flavor-enhancing
16 additives to [its] juices.” Jamba Juice has explained on its website its decision to
17 use Splenda by repeating McNeil’s two favorite deceptions about the product:
18 (1) “it doesn’t act like sugar because the body does not recognize it as a
19 carbohydrate,” and (2) “[t]he difference between Splenda (sucralose), Sweet ‘N
20 Low (saccharin), Equal® (aspartame) and other sweeteners on the market is that
21 Splenda is the only sweetener that is made from sugar so it tastes like sugar.”

22 **F. The Willfulness Of McNeil’s Misrepresentations**

23 30. The key sweetening ingredient of Splenda, sucralose, was first
24 discovered in 1976. Johnson & Johnson later formed McNeil in order to, among
25 other things, commercialize sucralose. By 1991, Canada had become the first
26 nation to approve the use of sucralose. In April 1998, the FDA first approved the
27 limited use of sucralose in the United States, and expanded that approval in 1999.
28 Sucralose received approval in the European Union in January 2004, and has also

1 been approved for use in Brazil, China, Japan and in various Latin American,
2 Asian, Caribbean, and Middle Eastern countries.

3 31. In order to gain from the FDA approval to sell sucralose for human
4 consumption in the United States, McNeil petitioned the FDA in the late 1980s to
5 propose an amendment to the federal food additive regulations. The submission to
6 the FDA made by McNeil included data and information garnered from toxicity
7 studies in several animal species, other tests in animals and information gained
8 from clinical tests in human volunteers. The human clinical testing addressed the
9 pharmacokinetics and metabolism of sucralose as well as its potential effects on
10 carbohydrate metabolism. These studies specifically disclosed and McNeil
11 reported to the FDA that humans absorbed between 11 and 27 percent of ingested
12 sucralose, and that between 20 and 30 percent of the absorbed sucralose would be
13 metabolized.

14 32. Despite knowledge of these facts, and of the synthetic molecular
15 structure of sucralose that makes it differ from sugar, and interact with taste buds on
16 the human tongue differently from sugar, McNeil has advertised and promoted
17 Splenda in the Natural Sweetener Market as though its consumers would not
18 metabolize the product and as though it was a natural product that tastes like sugar.
19 Such representations are all literally false, misleading and/or deceptive.

20 III.

21 THE SUGAR ASSOCIATION'S CLAIMS FOR RELIEF

22 FIRST CLAIM FOR RELIEF

23 (Violations of Section 43(a) of the Lanham Act – False Advertising)

24 33. The Sugar Association realleges and incorporates herein by this
25 reference each and every allegation contained in Paragraphs 1 through 32,
26 inclusive, of this Complaint as though set forth in full.

27 34. McNeil has used and continues to use false, deceptive and/or
28 misleading descriptions of fact and/or misrepresentations of fact in commercial

1 advertising and/or promotion regarding the nature, taste and healthfulness of
2 Splenda and its constituent parts. These advertisements have actually deceived,
3 continue to deceive and/or have the tendency to deceive a substantial part of the
4 audience for McNeil's messages in the Natural Sweetener Market.

5 35. McNeil is engaged in making these false, deceptive and/or misleading
6 descriptions of fact and/or misrepresentations of fact in commercial advertising
7 and/or promotion in California and in this district, and the effects of McNeil's acts
8 throughout the United States are intended to and do fall upon Members of the Sugar
9 Association in California and in this district.

10 36. McNeil's misrepresentations concern and have concerned McNeil's
11 products, services and/or commercial activities, specifically its products sold under
12 the brand Splenda.

13 37. The misrepresentations are and were material to McNeil's customers'
14 decisions to purchase Splenda branded products and/or products in which Splenda
15 is used as an ingredient or additive.

16 38. McNeil's knowledge about the synthetic manner in which sucralose is
17 manufactured, the fact that hydrolysis occurs at low pH in products that include
18 Splenda, and its absorption and metabolic processing after ingestion by humans, all
19 of which McNeil investigated and reported to the FDA, render its decisions to
20 market and promote Splenda as described above conscious and/or willful and/or
21 knowingly reckless with regard to the truth. This misconduct, above and beyond
22 the conduct required for liability under § 43(a) of the Lanham Act, should subject
23 McNeil to treble damages.

24 39. All such misrepresentations took place in interstate commerce.

25 40. McNeil has earned a substantial windfall and unnatural profits as the
26 direct and proximate result of falsely, misleadingly, and/or deceptively advertising
27 and promoting the nature, taste and healthfulness of Splenda. An appropriate share
28 of such profits to be demonstrated at trial should be returned to, and are lawfully

1 due to the Members of the Sugar Association, as competitors of McNeil in the
2 Natural Sweetener Market.

3 41. The Sugar Association has been damaged as a result of McNeil's acts,
4 in an amount to be demonstrated at trial. Specifically, McNeil's actions have
5 caused, *inter alia*, a diversion of trade from the Members of the Sugar Association
6 to McNeil, causing the Sugar Association to expend additional resources on
7 advertising and education to inform the consuming public of the truth.

8 9 **SECOND CLAIM FOR RELIEF**

10 (Violations of Cal. Bus. & Prof. Code §§ 17200 and 17500, *et seq.*, and
11 California Common Law - Misleading Advertising)

12 42. The Sugar Association realleges and incorporates herein by this
13 reference each and every allegation contained in Paragraphs 1 through 41,
14 inclusive, of this Complaint as though set forth in full.

15 43. McNeil has used and continues to use false, deceptive and/or
16 misleading descriptions of fact and/or misrepresentations of fact in commercial
17 advertising and/or promotion regarding the nature, taste and healthfulness of
18 Splenda and its constituent parts. These advertisements have actually deceived,
19 continue to deceive and/or have the tendency to deceive a substantial part of the
20 audience for McNeil's messages.

21 44. McNeil is engaged in these unfair, unlawful and deceptive activities in
22 California and in this district, and that the effects of McNeil's acts throughout the
23 United States are intended to and do fall upon Members of the Sugar Association in
24 California and in this district.

25 45. The Sugar Association has been damaged as a result of McNeil's acts,
26 in an amount to be demonstrated at trial. Specifically, McNeil's actions have
27 caused, *inter alia*, a diversion of trade from the Members of the Sugar Association
28

1 to McNeil, causing the Sugar Association to expend additional resources on
2 advertising and education to inform the consuming public of the truth.

3 46. McNeil's wrongful acts described herein have also caused great harm
4 to the general public and the marketplace. No legal remedy for the resulting injury
5 is adequate compensation; only an injunctive order directing McNeil to stop the
6 unfair conduct will suffice.

7 47. McNeil's knowledge about the synthetic manner in which sucralose is
8 manufactured, and its absorption and metabolic processing after ingestion by
9 humans, all of which McNeil investigated and reported to the FDA, render its
10 decisions to market and promote Splenda as described above conscious and/or
11 willful and/or knowingly reckless with regard to the truth.

12 IV.

13 PRAYER

14 WHEREFORE, the Sugar Association prays for judgment against
15 defendants, and each of them, as follows for all claims:

16 a. That this Court enjoin McNeil from advertising, promoting
17 and/or marketing Splenda in any manner for the purpose of acquiring,
18 benefiting from or trading on the commercial reputation, success and
19 goodwill of sugar;

20 b. That this Court order McNeil to pay damages to the Sugar
21 Association, for the harms associated with McNeil's sales through false
22 advertising, promotion and/or marketing;

23 c. That this Court award the Sugar Association treble the damages
24 award pursuant to 15 U.S.C. § 35;

25 d. That this case be found to be exceptional within the meaning of
26 15 U.S.C. § 1117;

27 e. That this Court award the Sugar Association the costs and
28 expenses, including all reasonable attorneys' fees, incurred by it;

1 f. That this Court award the Sugar Association pre-judgment and
2 post-judgment interest; and

3 g. That this Court grant the Sugar Association, such other and
4 further relief as the Court deems just and proper.
5

6 Dated: December 10, 2004

SQUIRE, SANDERS & DEMPSEY L.L.P.

7
8 By: 

Adam R. Fox
Mark N. Hurvitz

9
10 Attorneys for Plaintiff
11 THE SUGAR ASSOCIATION, INC.
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DEMAND FOR JURY TRIAL

The Sugar Association, Inc. hereby demands a trial by jury as to all issues so triable.

Dated: December 10, 2004

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: 

Adam R. Fox
Mark N. Hurvitz

Attorneys for Plaintiff
THE SUGAR ASSOCIATION, INC.

EXHIBIT B

RICHARD B. GOETZ (S.B. #115666)
DIANA M. TORRES (S.B. #162284)
CARLOS M. LAZATIN (S.B. #229650)
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400 South Hope Street
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Telephone: (213) 430-6000
Facsimile: (213) 430-6407

STEVEN A. ZALESIN
JEFFREY D. ROTENBERG
JENNIFER L. HIGGINS
(applying for admission *pro hac vice*)
PATTERSON, BELKNAP, WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10036-6710
Telephone: (212) 336-2000
Facsimile: (212) 336-2222

Attorneys for Defendants,
McNeil-PPC, Inc. and McNeil Nutritionals, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

THE SUGAR ASSOCIATION, INC., a
Delaware corporation,

Plaintiff,

v.

MCNEIL-PPC, INC., a New Jersey
corporation, MCNEIL NUTRITIONALS,
LLC, a Delaware Limited Liability
Company, and DOES 1 through 10,

Defendants.

Case No. 04 CV 10077 DSF (RZX)

**DEFENDANTS MCNEIL-PPC, INC.
AND MCNEIL NUTRITIONALS,
LLC'S ANSWER TO PLAINTIFF'S
COMPLAINT**

DEMAND FOR JURY TRIAL

Date: None set
Time: None set

Judge: Hon. Dale S. Fischer

ANSWER TO COMPLAINT

1 Defendants McNeil-PPC, Inc. and McNeil Nutritionals, LLC (collectively
2 “McNeil”) hereby answer, for themselves alone, the Complaint of Plaintiff the Sugar
3 Association as follows:

4 **JURISDICTION AND VENUE**

- 5
6 1. McNeil admits the allegations contained in ¶ 1.
7
8 2. McNeil admits that venue is proper in this district, but denies that
9 venue is proper pursuant to 28 U.S.C. §1391(a). Except as expressly admitted above,
10 McNeil denies the allegations contained in ¶ 2.

11 **PARTIES**

- 12 3. McNeil lacks knowledge or information sufficient to admit or deny
13 the allegations of ¶ 3, and, on that basis, denies each and every allegation contained
14 therein.

- 15 4. McNeil admits that McNeil-PPC, Inc. is a New Jersey corporation
16 that maintains its principal place of business in New Jersey.

- 17 5. McNeil admits that McNeil Nutritionals, LLC is a Delaware
18 corporation that maintains its principal place of business in Fort Washington,
19 Pennsylvania.

- 20 6. McNeil admits that McNeil Nutritionals, LLC manufactures an
21 artificial sweetener and markets it under the brand name Splenda. Except as expressly
22 admitted above, McNeil denies the allegations contained in ¶ 6.

- 23
24 7. McNeil avers that ¶ 7 does not allege facts that McNeil is required to
25 admit or deny.

26 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

- 27 8. McNeil denies each and every allegation contained in ¶ 8.
28

1 9. McNeil admits that Equal and Sweet’N Low are Splenda’s principal
2 competitors and that Splenda’s share of the market is more than that of Equal and
3 Sweet’N Low combined. Except as expressly admitted above, McNeil denies the
4 allegations contained in ¶ 9.

5 10. McNeil denies that it has recently changed its marketing emphasis or
6 the character of its representations to consumers concerning Splenda. McNeil admits that
7 the president of McNeil Nutritionals, LLC made the statements attributed to him in ¶ 10.
8 McNeil admits that the quoted statement regarding Domino and C&H appears on the
9 Splenda website. McNeil lacks knowledge or information sufficient to admit or deny the
10 remaining allegations of ¶ 10, and, on that basis, denies each and every allegation
11 contained therein except as expressly admitted above.

12 11. McNeil denies each and every allegation contained in ¶ 11.

13 12. McNeil admits that McNeil and its spokespeople have used the
14 tagline “made from sugar so it tastes like sugar” in the marketing of Splenda. McNeil
15 admits that one of the television ads for Splenda features the question “What are little girls
16 made of?” and answers that question “Splenda and spice and everything nice.” Except as
17 expressly admitted above, McNeil denies the allegations contained in ¶ 12.

18 13. McNeil admits that the sweetening ingredient in Splenda – sucralose
19 – is made by a multi-step process that starts with cane sugar. McNeil admits that Splenda
20 contains not only sucralose but the bulking ingredients dextrose and maltodextrin.
21 McNeil lacks knowledge or information sufficient to admit or deny the remaining
22 allegations of ¶ 13, and, on that basis, denies each and every allegation contained therein
23 except as expressly admitted above.

24 14. McNeil admits that it has made the quoted representations in its
25 marketing materials for Splenda. Except as expressly admitted above, McNeil denies the
26 allegations and characterizations contained in ¶ 14.
27
28

1 15. McNeil admits that the FDA Final Rule (published in the Federal
2 Register on April 3, 1998) states that, in studies of human male volunteers, between 11
3 and 27 percent of sucralose ingested is absorbed, and that between 20 and 30 percent of
4 the absorbed sucralose is metabolized by humans. McNeil denies that this finding is at
5 odds with any representation that McNeil has made, in its marketing materials or
6 elsewhere. McNeil lacks knowledge or information sufficient to admit or deny the
7 allegation regarding metabolization of dextrose and maltodextrin, and, on that basis,
8 denies each and every allegation made in connection therewith. Except as expressly
9 admitted above, McNeil denies the allegations contained in ¶ 15.

10 16. McNeil admits that it has stated publicly that within one year of its
11 introduction, Splenda captured nearly 14 percent of the U.S. market (measured in dollars)
12 for no-calorie sweeteners. McNeil admits that by January 2004, Splenda's dollar share of
13 the U.S. market had risen to 45.2 percent – more than that of Equal and Sweet'N Low
14 combined. Except as expressly admitted above, McNeil denies the allegations contained
15 in ¶ 16.

16 17. McNeil admits that it introduced the 9.7 ounce Granular Baker's Bag,
17 "the equivalent in sweetness of a five-pound bag of conventional sugar," in September
18 2003. Except as expressly admitted above, McNeil denies the allegations contained in ¶
19 17.

20 18. McNeil admits that it announced plans to introduce Splenda Sugar
21 Blend for Baking in June 2004, and that the president of McNeil Nutritionals, LLC
22 referred to that product as "a true sugar baking replacement option." Except as expressly
23 admitted above, McNeil denies the allegations and characterizations contained in ¶ 18.

24 19. McNeil admits that it made the quoted statement on its website.
25 Except as expressly admitted above, McNeil denies the allegations contained in ¶ 19.

26 20. McNeil lacks knowledge or information sufficient to admit or deny
27
28

1 the allegations of ¶ 20, and, on that basis, denies each and every allegation contained
2 therein.

3 21. McNeil admits that sucralose is the sweetening ingredient in Splenda.
4 McNeil denies that saccharin and aspartame were developed over the past two decades.
5 McNeil lacks knowledge or information sufficient to admit or deny the remaining
6 allegations of ¶ 21, and, on that basis, denies each and every allegation contained therein
7 except as expressly admitted above.

8 22. McNeil lacks knowledge or information sufficient to admit or deny
9 the allegations of ¶ 22, and, on that basis, denies each and every allegation contained
10 therein.

11 23. McNeil admits that it has made the quoted statements. Except as
12 expressly admitted above, McNeil denies the allegations contained in ¶ 23.

13 24. McNeil lacks knowledge or information sufficient to admit or deny
14 the allegations of ¶ 24, and, on that basis, denies each and every allegation contained
15 therein.

16 25. McNeil lacks knowledge or information sufficient to admit or deny
17 the allegations of ¶ 25, and, on that basis, denies each and every allegation contained
18 therein.

19 26. McNeil denies each and every allegation in ¶ 26.

20 27. McNeil admits that it advertises in order to encourage consumers to
21 purchase its product. Except as expressly admitted above, McNeil denies the allegations
22 contained in ¶ 27.

23 28. McNeil admits that the “made from sugar so it tastes like sugar”
24 tagline has been a part of McNeil’s advertising for Splenda, and that McNeil has touted
25 the fact that Splenda has no calories. Except as expressly admitted above, McNeil denies
26 the allegations and characterizations contained in ¶ 28.

1 29. McNeil admits that the quoted statements appear on the website for
2 Jamba Juice, and that Jamba Juice uses Splenda in certain of its drinks. Except as
3 expressly admitted above, McNeil denies the allegations contained in ¶ 29.

4 30. McNeil admits the allegations contained in ¶ 30, except that McNeil
5 denies that Johnson & Johnson formed "McNeil," as that term is defined in the Complaint,
6 for the purpose alleged.

7 31. McNeil admits that it filed a food additive petition proposing that the
8 food additive regulations be amended to provide for the safe use of sucralose as a
9 nonnutritive sweetener in food where standards of identity do not preclude such
10 use. McNeil admits that, according to the Final Rule, in support of this petition McNeil
11 submitted to the FDA data and information from toxicity studies in several animal species,
12 other specific tests in animals, information from clinical tests in human volunteers, and
13 supplemental materials. Except as expressly admitted above, McNeil denies the
14 allegations contained in ¶ 31.

15 32. McNeil denies each and every allegation in ¶ 32.

16
17 **FIRST CLAIM FOR RELIEF**

18 33. With respect to ¶ 33, McNeil hereby incorporates its responses as set
19 forth in Paragraphs 1 through 32 above as if fully set forth herein.

20 34. McNeil denies each and every allegation in ¶ 34.

21 35. McNeil denies each and every allegation in ¶ 35.

22 36. McNeil denies each and every allegation in ¶ 36.

23 37. McNeil denies each and every allegation in ¶ 37.

24 38. McNeil denies each and every allegation in ¶ 38.

25 39. McNeil denies each and every allegation in ¶ 39.

1 40. McNeil denies each and every allegation in ¶ 40.

2 41. McNeil denies each and every allegation in ¶ 41.

3 **SECOND CLAIM FOR RELIEF**

4
5 42. With respect to ¶ 42, McNeil hereby incorporates its responses as set
6 forth in Paragraphs 1 through 41 above as if fully set forth herein.

7 43. McNeil denies each and every allegation in ¶ 43.

8 44. McNeil denies each and every allegation in ¶ 44.

9 45. McNeil denies each and every allegation in ¶ 45.

10 46. McNeil denies each and every allegation in ¶ 46.

11
12
13 McNeil asserts the following as affirmative defenses:

14
15 **FIRST AFFIRMATIVE DEFENSE**

16 **(Failure to State a Claim)**

17 47. The Complaint fails, in whole or in part, to state a claim upon which
18 relief can be granted.

19 **SECOND AFFIRMATIVE DEFENSE**

20 **(Laches)**

21 48. The claims in the Complaint are barred, in whole or in part, by the
22 doctrine of laches.

23 **THIRD AFFIRMATIVE DEFENSE**

24 **(Waiver)**

25
26 49. The claims in the Complaint are barred, in whole or in part, by the
27 doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

50. The claims in the Complaint are barred, in whole or in part, by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

51. The claims in the Complaint are barred, in whole or in part, by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

52. The claims in the Complaint are barred, in whole or in part, by the applicable statutes of limitation.

SEVENTH AFFIRMATIVE DEFENSE

(First Amendment)

53. The claims in the Complaint are barred, in whole or in part, by the First Amendment of the United States Constitution.

EIGHTH AFFIRMATIVE DEFENSE

(Lack of Standing)

54. Plaintiff lacks standing to assert the claims of the Complaint.

NINTH AFFIRMATIVE DEFENSE

(Not Real Party in Interest)

55. Plaintiff is not the real party in interest in this litigation.

TENTH AFFIRMATIVE DEFENSE

(Nonjoinder of Parties)

56. The claims of the Complaint are barred, in whole or in part, by reason

1 of Plaintiff's failure to join one or more indispensable parties.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 **(Not Entitled to Relief)**

4 57. The claims of the Complaint are barred, in whole or in part, because
5 Plaintiff seeks relief to which it is not entitled.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 **(No Damages)**

8 58. The claims of the Complaint are barred, in whole or in part, because
9 Plaintiff has not suffered any damages.

10 **THIRTEENTH AFFIRMATIVE DEFENSE**

11 **(No Causation)**

12 59. The claims of the Complaint are barred, in whole or in part, because
13 any alleged injury to Plaintiff was not caused by McNeil's conduct.

14 **FOURTEENTH AFFIRMATIVE DEFENSE**

15 **(Failure to Mitigate Damages)**

16 60. Plaintiff's demands must be reduced or offset to the extent Plaintiff
17 has failed to mitigate or avoid its purported harm or damages.

18
19
20 WHEREFORE, McNeil respectfully prays for judgment in its favor as
21 follows:


- 22
23 a. That Plaintiff take nothing by its Complaint, and that the same be
24 dismissed in its entirety with prejudice;
- 25 b. That McNeil be awarded its costs and attorneys' fees; and
- 26
27
28

1 c. That the Court order such other and further relief as it deems just and
2 proper.
3

4 Dated: February 2, 2005

5 PATTERSON, BELKNAP, WEBB &
6 TYLER LLP
7 STEVEN A. ZALESIN
8 JEFFREY D. ROTENBERG
9 JENNIFER L. HIGGINS

10 O'MELVENY & MYERS LLP
11 RICHARD B. GOETZ
12 DIANA M. TORRES
13 CARLOS M. LAZATIN

14 By 
15 Carlos M. Lazatin
16 Attorneys for Defendants McNeil-PPC,
17 Inc. and McNeil Nutritionals LLC
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LA2:749777.1

PROOF OF SERVICE

I, Deresa Gade, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 400 South Hope Street, Los Angeles, CA 90071-2899. On February 2, 2005, I served the within documents:


**DEFENDANTS MCNEIL-PPC, INC. AND MCNEIL
NUTRITIONALS, LLC'S ANSWER TO PLAINTIFFS
COMPLAINT; DEMAND FOR JURY TRIAL**

- ☐ **BY FACSIMILE:** I communicated such document via facsimile to the addressee as indicated on the attached service list.
- ☒ **BY MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY PERSONAL SERVICE:** By delivering a copy thereof to the office of the following, and either handing the copy to the person named below or leaving it with the receptionist or other person having charge of the office thereof:

Adam R. Fox, Esq.
Mark Hurvitz, Esq.
Squire, Sanders & Dempsey LLP
801 South Figueroa Street, 14th Floor
Los Angeles, CA 90017-5554
(213) 624-2500
(213) 623-4581 FAX

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on February 2, 2005, at Los Angeles, California.


Deresa Gade

NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY FOR OR PLAINTIFF OR
 DEFENDANT IF PLAINTIFF OR DEFENDANT IS PRO PER
 CARLOS M. LAZATIN (SBN 229630)
 O'MELVENY & MYERS LLP
 400 SOUTH HOPE STREET
 LOS ANGELES, CA 90071
 213-430-6000

ATTORNEYS FOR: DEFENDANTS

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

THE SUGAR ASSOCIATION

CASE NUMBER

04 CV 10077 DSF (RZX)

Plaintiff(s)

v.

MCNEIL-PPC, INC.

CERTIFICATION AND NOTICE
 OF INTERESTED PARTIES
 (Local Rule 7.1-1)

Defendant(s)

TO: THE COURT AND ALL PARTIES APPEARING OF RECORD:

The undersigned, counsel of record for McNeil-PPC, Inc. and McNeil Nutritionals, LLC
 (or party appearing in pro per), certifies that the following listed party (or parties) has (have) a direct, pecuniary
 interest in the outcome of this case. These representations are made to enable the Court to evaluate possible
 disqualification or recusal. (Use additional sheet if necessary.)

PARTY

CONNECTION

(List the names of all such parties and identify their connection and interest.)

McNeil-PPC, Inc.

Defendant

McNeil Nutritionals, LLC

Defendant

Date

2 Feb. 2005

Sign



Carlos M. Lazatin

Attorney of record for or party appearing in pro per

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i>,)	
)	
Defendants.)	

DECLARATION OF ANDREW C. BRISCOE III

I, Andrew C. Briscoe III, declare as follows:

1. I am over eighteen (18) years of age and am authorized by the Sugar Association, Inc. ("Sugar Association"), a discrete non-stock, 501(c)(6) non-profit corporate entity organized under the General Corporation Law of Delaware, in my capacity as President and Chief Executive Officer of the Sugar Association, to make this declaration on behalf of the Sugar Association. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. The Sugar Association's principal place of business is in Washington, D.C.

3. The Sugar Association has seventeen (17) dues-paying members, all of whom are sugar cane and sugar beet growers and processors of sugar in the United States: The Amalgamated Sugar Company LLC, American Crystal Sugar Company, American Sugar Cane League, American Sugar Refining, Inc., Atlantic Sugar Association, Inc., Hawaiian Sugar & Transportation Cooperative, Imperial Sugar Company, Michigan Sugar Company, Minn-Dak Farmers Cooperative, Okeelanta Corporation, Osceola Farms

Company, Rio Grande Valley Sugar Growers, Inc., Southern Minnesota Beet Sugar Cooperative, Sugar Cane Growers Cooperative of Florida, United States Sugar Corporation, Western Sugar Cooperative, and Wyoming Sugar Company, LLC ("Member Companies").

4. The Sugar Association has a Board of Directors comprised of twenty-two (22) directors. Each of the Member Companies is entitled to designate a single member of the Board of Directors. Other than the seats reserved for the Member Companies, there are four (4) advisory director positions reserved for four (4) sugarbeet growers, as further elaborated below, and one (1) reserved for me in my capacity as President and Chief Executive Officer of the Sugar Association.

5. I have reviewed a copy of Plaintiff's Complaint and I am familiar with its contents.

6. I am aware that, in addition to the Sugar Association, each of the Member Companies and the American Sugarbeet Growers Association have been named as defendants in this lawsuit.

7. The American Sugarbeet Growers Association is not a member of the Sugar Association. Each year the American Sugarbeet Growers Association facilitates the selection of four (4) sugarbeet growers who represent different regions of the United States to sit on the Sugar Association's Board of Directors for the purposes of communication and education of the American Sugarbeet Growers Association's Board of Directors. The votes of these four (4) sugarbeet growers on the Sugar Association's Board of Directors are only advisory. Moreover, the growers' votes represent their own

views and positions, and not necessarily those of the American Sugarbeet Growers Association.

8. The Sugar Association acted in its corporate capacity in issuing the following statement, currently appearing on the home page of the Sugar Association's website, www.sugar.org, regarding the Dietary Guidelines for Americans (the "Guidelines") released by the United States Departments of Agriculture and Health and Human Services in 2005: "We stand firm in our assertion that every major scientific review . . . has concluded that there is not a direct link between added sugars intake and any lifestyle disease, including obesity For the Guidelines to infer any type of limit on added sugars is not science-based." (Compl. ¶ 41). The Sugar Association did not obtain the approval of either the Board of Directors or the Member Companies in issuing this statement.

9. The Sugar Association acted in its corporate capacity in issuing the following statement by the Sugar Association's Vice-President of Scientific Affairs regarding the Guidelines: "Embedded within the report is the recommendation to limit added sugars. That's not supported by the [preponderance] of science." (Compl. ¶ 42) (insert supplied). The Sugar Association did not obtain the approval of either the Board of Directors or the Member Companies in issuing this statement.

10. The Sugar Association acted in its corporate capacity in issuing the following statements in late 2004: "that it would commence a significant advertising campaign 'to promote the benefits of real sugar' following 'nine years of a sabbatical from advertising'"; and "that, from 1986 to 1995, the industry invested \$5 million per year in a generic sugar campaign and '[w]e were able to increase sugar consumption by

19 percent over that period of time [and] . . . [o]ur objective [here] is to do the same.” (Compl. ¶ 45). The Sugar Association did not obtain the approval of either the Board of Directors or the Member Companies in issuing these statements.

11. Plaintiff’s Complaint alleges that I stated in late 2004 that “each Member company of the Association committed \$3.5 million per year to this multi-year ‘public-education’ project.” (Compl. ¶ 45). To the contrary, the Sugar Association, acting in its corporate capacity, explained that only five (5) of the Member Companies chose to participate and commit a total of \$3.5 million per year for a total of three (3) years to this voluntary sugar-promotion program. The Sugar Association did not obtain the approval of either the Board of Directors or the Member Companies in issuing the foregoing clarified statement.

12. The Sugar Association acted in its corporate capacity in planning, funding, and executing the “Truth About Splenda” website, www.truthaboutsplenda.com. (Compl. ¶¶ 47-53). The Sugar Association did not obtain the specific approval of either the Board of Directors or the Member Companies for any statement made on this website.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2005.



Andrew C. Briscoe, III

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i>,)	
)	
Defendants.)	

DECLARATION OF LISA M. MALOY

I, Lisa M. Maloy, declare as follows:

1. I am over eighteen (18) years of age and am authorized by American Crystal Sugar Company ("American Crystal"), a Minnesota corporation, in my capacity as Assistant Secretary of American Crystal, to make this declaration on behalf of American Crystal. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. American Crystal's principal place of business is in Minnesota.

3. American Crystal has no offices in Delaware.

4. American Crystal is not licensed or registered to do business in Delaware.

5. American Crystal does not maintain a registered agent for service of process in Delaware.

6. American Crystal does not now conduct, nor has it ever conducted, any business in Delaware.

7. American Crystal does not sell any products to Delaware customers. American Crystal is a member in a Minnesota cooperative corporation that sells products,

including American Crystal sugar, nationwide, including in Delaware. At no time during the past five years has American Crystal been the exclusive member of this Minnesota cooperative corporation. During that period, other members have included Minn-Dak Farmers Cooperative, United States Sugar Corporation, and Southern Minnesota Beet Sugar Cooperative.

8. American Crystal does not offer any services in Delaware.
9. American Crystal does not own or lease any real estate or personal property in Delaware.
10. American Crystal does not maintain any bank accounts in Delaware.
11. American Crystal does not pay any Delaware taxes.
12. American Crystal maintains no telephone listing in Delaware.
13. American Crystal has no employees or agents in Delaware.
14. American Crystal has not commenced any lawsuits in Delaware.
15. American Crystal has not been named as a defendant in any other lawsuit in Delaware.
16. American Crystal does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.
17. American Crystal maintains an informational internet website. This website is not commercially interactive and cannot be used to conduct commercial activities with Delaware residents.
18. American Crystal has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has American Crystal waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 23, 2005.

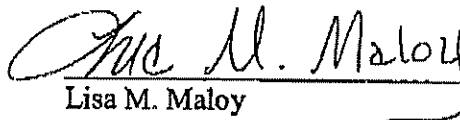

Lisa M. Maloy

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

McNEIL NUTRITIONALS, LLC,

Plaintiff,

v.

THE SUGAR ASSOCIATION, *et al.*,

Defendants.

)
)
)
)
)
)
)
)
)
)

Case No. 1:05-CV-00069-GMS

DECLARATION OF JAMES H. SIMON

I, James H. Simon, declare as follows:

1. I am over eighteen (18) years of age and am authorized by the American Sugar Cane League ("ASCL"), a Louisiana corporation, in my capacity as General Manager of ASCL, to make this declaration on behalf of ASCL. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. ASCL's principal place of business is in Louisiana.

3. ASCL has no offices in Delaware.

4. ASCL is not licensed or registered to do business in Delaware.

5. ASCL does not maintain a registered agent for service of process in Delaware.

6. ASCL does not now conduct, nor has it ever conducted, any business in Delaware.

7. ASCL does not sell or ship any products to Delaware customers.

8. ASCL does not offer any services in Delaware.

9. ASCL does not own or lease any real estate or personal property in Delaware.

10. ASCL does not maintain any bank accounts in Delaware.

11. ASCL does not pay any Delaware taxes.

12. ASCL maintains no telephone listing in Delaware.

13. ASCL has no employees or agents in Delaware.

14. ASCL has never commenced any lawsuits in Delaware.

15. ASCL has never been named as a defendant in any other lawsuit in Delaware.

16. ASCL does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. ASCL maintains an informational internet website. This website is not commercially interactive and cannot be used to conduct commercial activities with Delaware residents.

18. ASCL has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has ASCL waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 23, 2005.

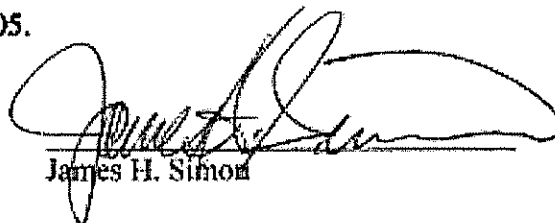

James H. Simon

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF OSCAR R. HERNANDEZ

I, Oscar R. Hernandez, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Atlantic Sugar Association, Inc. ("Atlantic Sugar"), a Florida corporation, in my capacity as Treasurer for Atlantic Sugar, to make this declaration on behalf of Atlantic Sugar. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. Atlantic Sugar's principal place of business is in Florida.

3. Atlantic Sugar has no offices in Delaware.

4. Atlantic Sugar is not licensed or registered to do business in Delaware.

5. Atlantic Sugar does not maintain a registered agent for service of process in Delaware.

6. Atlantic Sugar does not now conduct, nor has it ever conducted, any business in Delaware.

7. Atlantic Sugar does not sell or ship any products to Delaware customers.

8. Atlantic Sugar does not offer any services in Delaware.

9. Atlantic Sugar does not own or lease any real estate or personal property in Delaware.

10. Atlantic Sugar does not maintain any bank accounts in Delaware.

11. Atlantic Sugar does not pay any Delaware taxes.

12. Atlantic Sugar maintains no telephone listing in Delaware.

13. Atlantic Sugar has no employees or agents in Delaware.

14. Atlantic Sugar has not commenced any lawsuits in Delaware since at least 1986.

15. Atlantic Sugar has not been named as a defendant in any other lawsuit in Delaware since at least 1986.

16. Atlantic Sugar does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. Atlantic Sugar does not maintain an internet website.

18. Atlantic Sugar has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has Atlantic Sugar waived any defense to jurisdiction since at least 1986.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2005.

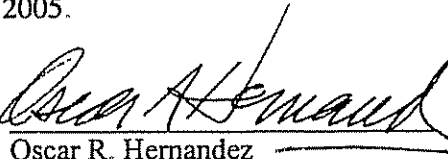

Oscar R. Hernandez

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF E. ALAN KENNETT

I, E. Alan Kennett, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Hawaiian Sugar & Transportation Cooperative ("HS&TC"), a Hawaiian corporation, in my capacity as Vice Chairman of HS&TC, to make this declaration on behalf of HS&TC. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. HS&TC's principal place of business is in Hawaii.

3. HS&TC has no offices in Delaware.

4. HS&TC is not licensed or registered to do business in Delaware.

5. HS&TC does not maintain a registered agent for service of process in Delaware.

6. HS&TC does not now conduct, nor has it ever conducted, any business in Delaware.

7. HS&TC does not sell or ship any products to Delaware customers.

8. HS&TC does not offer any services in Delaware.

9. HS&TC does not own or lease any real estate or personal property in Delaware.

10. HS&TC does not maintain any bank accounts in Delaware.

11. HS&TC does not pay any Delaware taxes.

12. HS&TC maintains no telephone listing in Delaware.

13. HS&TC has no employees or agents in Delaware.

14. HS&TC has never commenced any lawsuits in Delaware.

15. HS&TC has never been named as a defendant in any other lawsuit in Delaware.

16. HS&TC does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. HS&TC does not maintain an internet website.

18. HS&TC has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has HS&TC waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 23, 2005.

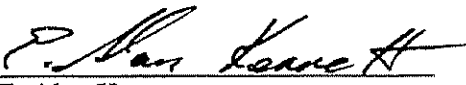

E. Alan Kennett

EXHIBIT H

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i>,)	
)	
Defendants.)	

DECLARATION OF WILLIAM SCHWER

I, William Schwer, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Imperial Sugar Company ("Imperial"), a Texas corporation, in my capacity as General Counsel of Imperial, to make this declaration on behalf of Imperial. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. Imperial's principal place of business is in Texas.

3. Imperial has no offices in Delaware.

4. Imperial is not licensed or registered to do business in Delaware.

5. Imperial does not maintain a registered agent for service of process in Delaware.

6. Imperial derives less than one-tenth of one percent of its total annual sales revenue from sales of sugar and other products to customers in Delaware.

7. Imperial's sales to customers in Delaware include sales made over Imperial's internet website.

8. Imperial does not offer any services in Delaware.
9. Imperial does not own or lease any real estate or personal property in Delaware.
10. Imperial does not maintain any bank accounts in Delaware.
11. Imperial does not pay any Delaware taxes.
12. Imperial maintains no telephone listing in Delaware.
13. Imperial has no employees or agents in Delaware.
14. In 2001, Imperial filed for Chapter 11 protection in Delaware. The matter was resolved in that same year. This was the only time that Imperial has ever filed a lawsuit in federal or state court in Delaware.
15. Imperial has not been named as a defendant in any other lawsuit in Delaware.
16. Imperial does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.
17. Since its Chapter 11 reorganization, Imperial has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has Imperial waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2005.


William Schwer

EXHIBIT I

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i>,)	
)	
Defendants.)	

DECLARATION OF MARK S. FLEGENHEIMER

I, Mark S. Flegenheimer, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Michigan Sugar Company ("Michigan Sugar"), a Michigan cooperative corporation, in my capacity as President and Chief Executive Officer of Michigan Sugar, to make this declaration on behalf of Michigan Sugar. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. Michigan Sugar's principal place of business is in Michigan.

3. Michigan Sugar has no offices in Delaware.

4. Michigan Sugar is not licensed or registered to do business in Delaware.

5. Michigan Sugar does not maintain a registered agent for service of process in Delaware.

6. Michigan Sugar does not now conduct, nor has it ever conducted, any business in Delaware.

7. Michigan Sugar does not sell or ship any products to Delaware customers.

8. Michigan Sugar does not offer any services in Delaware.

9. Michigan Sugar does not own or lease any real estate or personal property in Delaware.

10. Michigan Sugar does not maintain any bank accounts in Delaware.

11. Michigan Sugar does not pay any Delaware taxes.

12. Michigan Sugar maintains no telephone listing in Delaware.

13. Michigan Sugar has no employees or agents in Delaware.

14. Michigan Sugar has not commenced any lawsuits in Delaware.

15. Michigan Sugar has not been named as a defendant in any other lawsuit in Delaware.

16. Michigan Sugar does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. Michigan Sugar maintains an informational internet website. This website is not commercially interactive and cannot be used to conduct commercial activities with Delaware residents.

18. Michigan Sugar has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has Michigan Sugar waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 23, 2005.



Mark S. Flegenheimer

EXHIBIT J

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i>,)	
)	
Defendants.)	

DECLARATION OF DAVID H. ROCHE

I, David H. Roche, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Minn-Dak Farmers Cooperative ("Minn-Dak"), a North Dakota corporation, in my capacity as President and Chief Executive Officer of Minn-Dak, to make this declaration on behalf of Minn-Dak. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. Minn-Dak's principal place of business is in North Dakota.

3. Minn-Dak has no offices in Delaware.

4. Minn-Dak is not licensed or registered to do business in Delaware.

5. Minn-Dak does not maintain a registered agent for service of process in Delaware.

6. Minn-Dak does not now conduct, nor has it ever conducted, any business in Delaware.

7. Minn-Dak does not sell any products to Delaware customers. Minn-Dak is a member in a Minnesota cooperative corporation that sells products, including Minn-

Dak sugar, nationwide, including in Delaware. At no time during the past five years has Minn-Dak been the exclusive member of this Minnesota cooperative corporation. During that period, other members have included American Crystal Sugar Company, United States Sugar Corporation, and Southern Minnesota Beet Sugar Cooperative.

8. Minn-Dak does not offer any services in Delaware.

9. Minn-Dak does not own or lease any real estate or personal property in Delaware.

10. Minn-Dak does not maintain any bank accounts in Delaware.

11. Minn-Dak does not pay any Delaware taxes.

12. Minn-Dak maintains no telephone listing in Delaware.

13. Minn-Dak has no employees or agents in Delaware.

14. Minn-Dak has not commenced any lawsuits in Delaware.

15. Minn-Dak has not been named as a defendant in any other lawsuit in Delaware.

16. Minn-Dak does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. Minn-Dak maintains an informational internet website. This website is not commercially interactive and cannot be used to conduct commercial activities with Delaware residents.

18. Minn-Dak has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has Minn-Dak waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2005.



David H. Roche

EXHIBIT K

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i>,)	
)	
Defendants.)	

DECLARATION OF WILLIAM F. TARR

I, William F. Tarr, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Osceola Farms Company ("Osceola Farms"), a Florida corporation, in my capacity as Vice President and Legal Counsel for Osceola Farms, to make this declaration on behalf of Osceola Farms. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. Osceola Farms' principal place of business is in Florida.

3. Osceola Farms has no offices in Delaware.

4. Osceola Farms is not licensed or registered to do business in Delaware.

5. Osceola Farms does not maintain a registered agent for service of process in Delaware.

6. Osceola Farms does not now conduct, nor has it ever conducted, any business in Delaware.

7. Osceola Farms does not sell or ship any products to Delaware customers.

8. Osceola Farms does not offer any services in Delaware.

9. Osceola Farms does not own or lease any real estate or personal property in Delaware.

10. Osceola Farms does not maintain any bank accounts in Delaware.

11. Osceola Farms does not pay any Delaware taxes.

12. Osceola Farms maintains no telephone listing in Delaware.

13. Osceola Farms has no employees or agents in Delaware.

14. Osceola Farms has not commenced any lawsuits in Delaware since at least 1986.

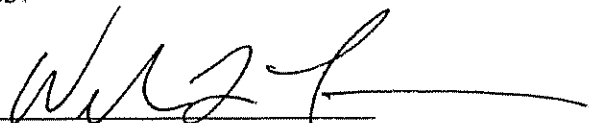
15. Osceola Farms has not been named as a defendant in any other lawsuit in Delaware since at least 1986.

16. Osceola Farms does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. Osceola Farms does not maintain an internet website.

18. Osceola Farms has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has Osceola Farms waived any defense to jurisdiction since at least 1986.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2005.



William F. Tarr

EXHIBIT L

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i>,)	
)	
Defendants.)	

DECLARATION OF STEVE BEARDEN

I, Steve Bearden, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Rio Grande Valley Sugar Growers, Inc. ("Rio Grande"), a Texas corporation, in my capacity as President and Chief Executive Officer of Rio Grande, to make this declaration on behalf of Rio Grande. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. Rio Grande's principal place of business is in Texas.

3. Rio Grande has no offices in Delaware.

4. Rio Grande is not licensed or registered to do business in Delaware.

5. Rio Grande does not maintain a registered agent for service of process in Delaware.

6. Rio Grande does not now conduct, nor has it ever conducted, any business in Delaware.

7. Rio Grande does not sell or ship any products to Delaware customers.

8. Rio Grande does not offer any services in Delaware.

9. Rio Grande does not own or lease any real estate or personal property in Delaware.

10. Rio Grande does not maintain any bank accounts in Delaware.

11. Rio Grande does not pay any Delaware taxes.

12. Rio Grande maintains no telephone listing in Delaware.

13. Rio Grande has no employees or agents in Delaware.

14. Rio Grande has not commenced any lawsuits in Delaware.


15. Rio Grande has not been named as a defendant in any other lawsuit in Delaware.

16. Rio Grande does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. Rio Grande maintains an informational internet website. This website is not commercially interactive and cannot be used to conduct commercial activities with Delaware residents.

18. Rio Grande has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has Rio Grande waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 23, 2005.



Steve Bearden

EXHIBIT M

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i>,)	
)	
Defendants.)	

DECLARATION OF JOHN A. RICHMOND

I, John A. Richmond, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Southern Minnesota Beet Sugar Cooperative ("SMBSC"), a Minnesota corporation, in my capacity as President and Chief Executive Officer of SMBSC, to make this declaration on behalf of SMBSC. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. SMBSC's principal place of business is in Minnesota.

3. SMBSC has no offices in Delaware.

4. SMBSC is not licensed or registered to do business in Delaware.

5. SMBSC does not maintain a registered agent for service of process in Delaware.

6. SMBSC does not now conduct, nor has it ever conducted, any business in Delaware.

7. SMBSC does not sell or ship any products to Delaware customers. Prior to 2005, it did have an interest in a Minnesota cooperative corporation that sold products,

including SMBSC sugar, nationwide, including in Delaware. At no time during the past five years was SMBSC the exclusive member of this Minnesota cooperative corporation. During that period, other members included American Crystal Sugar Company, United States Sugar Corporation, and Minn-Dak Farmers Cooperative.

8. SMBSC does not offer any services in Delaware.

9. SMBSC does not own or lease any real estate or personal property in Delaware.

10. SMBSC does not maintain any bank accounts in Delaware.

11. SMBSC does not pay any Delaware taxes.

12. SMBSC maintains no telephone listing in Delaware.

13. SMBSC has no employees or agents in Delaware.

14. SMBSC has not commenced any lawsuits in Delaware.

15. SMBSC has not been named as a defendant in any other lawsuit in Delaware.

16. SMBSC does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. SMBSC maintains an informational internet website. This website is not commercially interactive and cannot be used to conduct commercial activities with Delaware residents.

18. SMBSC has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has SMBSC waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 23, 2005.

A handwritten signature in black ink, appearing to be "J.A. Richmond", written in a cursive style.

John A. Richmond

EXHIBIT N

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i>,)	
)	
Defendants.)	

DECLARATION OF JEFFREY J. WARD

I, Jeffrey J. Ward, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Sugar Cane Growers Cooperative of Florida ("SCGC"), a Florida corporation, in my capacity as Vice President of Legal Affairs of SCGC, to make this declaration on behalf of SCGC. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. SCGC's principal place of business is in Florida.

3. SCGC has no offices in Delaware.

4. SCGC is not licensed or registered to do business in Delaware.

5. SCGC does not maintain a registered agent for service of process in Delaware.

6. SCGC does not now conduct, nor has it ever conducted, any business in Delaware.

7. SCGC does not sell or ship any products to Delaware customers.

8. SCGC does not offer any services in Delaware.

9. SCGC does not own or lease any real estate or personal property in Delaware.

10. SCGC does not maintain any bank accounts in Delaware.

11. SCGC does not pay any Delaware taxes.

12. SCGC maintains no telephone listing in Delaware.

13. SCGC has no employees or agents in Delaware.

14. SCGC has not commenced any lawsuits in Delaware.

15. SCGC has not been named as a defendant in any other lawsuit in Delaware.

16. SCGC does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. SCGC maintains an informational internet website. This website is not commercially interactive and cannot be used to conduct commercial activities with Delaware residents.

18. SCGC has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has SCGC waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 23^d, 2005.

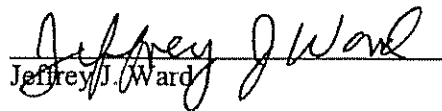

Jeffrey J. Ward

EXHIBIT O

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,

Plaintiff,

v.

THE SUGAR ASSOCIATION, *et al.*,

Defendants.

)
)
)
)
)
)
)
)
)
)

Case No. 1:05-CV-00069-GMS

DECLARATION OFINDER K. MATHUR

I, Inder K. Mathur, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Western Sugar Cooperative ("Western Sugar"), a Colorado corporation, in my capacity as President and Chief Executive Officer of Western Sugar, to make this declaration on behalf of Western Sugar. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. Western Sugar's principal place of business is in Colorado.

3. Western Sugar has no offices in Delaware.

4. Western Sugar is not licensed or registered to do business in Delaware.

5. Western Sugar does not maintain a registered agent for service of process in Delaware.

6. Western Sugar does not now conduct, nor has it ever conducted, any business in Delaware.

7. Western Sugar does not sell or ship any products to Delaware customers.

8. Western Sugar does not offer any services in Delaware.

9. Western Sugar does not own or lease any real estate or personal property in Delaware.

10. Western Sugar does not maintain any bank accounts in Delaware.

11. Western Sugar does not pay any Delaware taxes.

12. Western Sugar maintains no telephone listing in Delaware.

13. Western Sugar has no employees or agents in Delaware.

14. Western Sugar has not commenced any lawsuits in Delaware.

15. Western Sugar has not been named as a defendant in any other lawsuit in Delaware.

16. Western Sugar does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. Western Sugar maintains an informational internet website. This website is not commercially interactive and cannot be used to conduct commercial activities with Delaware residents.

18. Western Sugar has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has Western Sugar waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2005.



Inder K. Mathur

EXHIBIT P

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i>,)	
)	
Defendants.)	

DECLARATION OF RICHARD MCKAMEY

I, Richard McKamey, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Wyoming Sugar Company, LLC ("Wyoming Sugar"), a Wyoming limited liability company, in my capacity as Chairman of Wyoming Sugar, to make this declaration on behalf of Wyoming Sugar. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. Wyoming Sugar's principal place of business is in Wyoming.

3. Wyoming Sugar has no offices in Delaware.

4. Wyoming Sugar is not licensed or registered to do business in Delaware.

5. Wyoming Sugar does not maintain a registered agent for service of process in Delaware.

6. Wyoming Sugar does not now conduct, nor has it ever conducted, any business in Delaware.

7. Wyoming Sugar does not sell or ship any products to Delaware customers.

8. Wyoming Sugar does not offer any services in Delaware.

9. Wyoming Sugar does not own or lease any real estate or personal property in Delaware

10. Wyoming Sugar does not maintain any bank accounts in Delaware.

11. Wyoming Sugar does not pay any Delaware taxes.

12. Wyoming Sugar maintains no telephone listing in Delaware.

13. Wyoming Sugar has no employees or agents in Delaware.

14. Wyoming Sugar has not commenced any lawsuits in Delaware.

15. Wyoming Sugar has not been named as a defendant in any other lawsuit in Delaware.

16. Wyoming Sugar does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. Wyoming Sugar maintains an informational internet website. This website is not commercially interactive and cannot be used to conduct commercial activities with Delaware residents.

18. Wyoming Sugar has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has Wyoming Sugar waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 22, 2005.

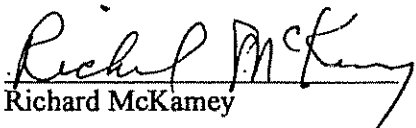

Richard McKamey

EXHIBIT Q

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

McNEIL NUTRITIONALS, LLC,

Plaintiff,

v.

THE SUGAR ASSOCIATION, *et al.*,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

Case No. 1:05-CV-00069-GMS

DECLARATION OF LUTHER MARKWART

I, Luther Markwart, declare as follows:

1. I am over eighteen (18) years of age and am authorized by the American Sugarbeet Growers Association, a trade association incorporated in the District of Columbia, in my capacity as Executive Vice President of the American Sugarbeet Growers Association, to make this declaration on behalf of the American Sugarbeet Growers Association. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. The American Sugarbeet Growers Association's principal place of business is in Washington, D.C.

3. The American Sugarbeet Growers Association has no offices in Delaware.

4. The American Sugarbeet Growers Association is not licensed or registered to do business in Delaware.

5. The American Sugarbeet Growers Association does not maintain a registered agent for service of process in Delaware.

6. The American Sugarbeet Growers Association does not now conduct, nor has it ever conducted, any business in Delaware.

7. The American Sugarbeet Growers Association does not sell or ship any products to Delaware customers.

8. The American Sugarbeet Growers Association does not offer any services in Delaware.

9. The American Sugarbeet Growers Association does not own or lease any real estate or personal property in Delaware.

10. The American Sugarbeet Growers Association does not maintain any bank accounts in Delaware.

11. The American Sugarbeet Growers Association does not pay any Delaware taxes.

12. The American Sugarbeet Growers Association maintains no telephone listing in Delaware.

13. The American Sugarbeet Growers Association has no employees or agents in Delaware.

14. The American Sugarbeet Growers Association has not commenced any lawsuits in Delaware.

15. The American Sugarbeet Growers Association has not been named as a defendant in any other lawsuit in Delaware.

16. The American Sugarbeet Growers Association does not advertise in any Delaware-based publications or direct any marketing efforts at Delaware specifically.

17. The American Sugarbeet Growers Association maintains an informational internet website. This website is not commercially interactive and cannot be used to conduct commercial activities with Delaware residents.

18. The American Sugarbeet Growers Association is not a member of the Sugar Association, Inc. ("Sugar Association"). Although each year the American Sugarbeet Growers Association facilitates the selection of four sugarbeet growers representing different regions of the United States to sit on the Sugar Association's Board of Directors for the purposes of communication and education of the American Sugarbeet Growers Association's Board of Directors, the American Sugarbeet Growers Association has no authority to approve any policy, actions, or financial obligations taken by the Sugar Association.

19. The American Sugarbeet Growers Association has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has the American Sugarbeet Growers Association waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 23, 2005.



Luther Markwart

EXHIBIT R

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF MICHAEL J. PETRUZZELLO

I, Michael J. Petruzzello, declare as follows:

1. I am over eighteen (18) years of age and am authorized by Qorvis Communications, LLC ("Qorvis"), a Virginia limited liability company, in my capacity as Managing Partner of Qorvis, to make this declaration on behalf of Qorvis. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to the truth of those facts.

2. Qorvis' principal place of business is in Washington, D.C.

3. Qorvis has no offices in Delaware.

4. Qorvis is not licensed or registered to do business in Delaware.

5. Qorvis does not maintain a registered agent for service of process in Delaware.

6. Qorvis does not generally conduct business in Delaware. On three occasions, one employee of Qorvis has accompanied a client on trips to Delaware to meet with Delaware's Insurance Commissioner regarding a matter completely unrelated to the present litigation.

7. Qorvis does not sell or ship any products to Delaware customers.

8. Qorvis does not regularly offer any services in Delaware.

9. Qorvis does not own or lease any real estate or personal property in Delaware.

10. Qorvis does not maintain any bank accounts in Delaware.

11. Qorvis does not pay any Delaware taxes.

12. Qorvis maintains no telephone listing in Delaware.

13. Qorvis has no employees or agents in Delaware.

14. Qorvis has not commenced any lawsuits in Delaware.

15. Qorvis has not been named as a defendant in any other lawsuit in Delaware.

16. Qorvis does not advertise on its own behalf in any Delaware-based publications or direct any marketing efforts on its own behalf at Delaware specifically. As part of the Sugar Association, Inc.'s ("Sugar Association") national mailing of 5,000 to 10,000 postcards, one (1) postcard regarding sucralose was sent by Qorvis to a health reporter in New Castle, Delaware for the Wilmington News Journal.

17. Qorvis maintains an informational internet website located at www.qorvis.com. This website is not commercially interactive and cannot be used to conduct commercial activities with Delaware residents.

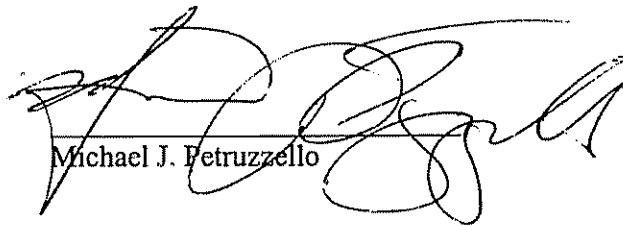
18. I have reviewed a copy of Plaintiff's Complaint and I am familiar with its contents.

19. The Complaint alleges facts relating to work that Qorvis performed for the Sugar Association in promoting the Sugar Association's education program about the chemical sucralose. The work performed by Qorvis for the Sugar Association includes the "Truth About Splenda" website located at www.truthaboutsplenda.com. This website was designed and is maintained by Qorvis' web designer in Virginia. The web designer entered the information into the website's database in Virginia. No data entered into the website's database was researched,

collected, or entered in Delaware. The website, which is not targeted at Delaware or its residents, does not advertise Qorvis' services, allow visitors to contract for Qorvis' services, offer any products or services for sale, solicit donations of any kind, or generate any revenues for Qorvis.

20. Qorvis has neither consented nor submitted to the jurisdiction of the courts of Delaware, nor has Qorvis waived any defense to jurisdiction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2005.

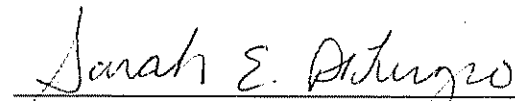


Michael J. Petruzzello

CERTIFICATE OF SERVICE

I, Sarah E. Diluzio, hereby certify that on March 25, 2005, I electronically filed true and correct copies of the foregoing DECLARATION OF SARAH E. DILUZIO IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS with the Clerk of the Court using CM/ECF which will send notification of such filing to the following counsel of record:

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